

REMARKS

The present response is being submitted pursuant to the Office Action mailed October 5th, 2006. A request for a one month extension of time in which to respond, together with the necessary fee, is also being submitted herewith. Claims 1-23 are pending in the application.

REJECTION UNDER 35 U.S.C. § 102(E)

Claims 1-21 and 23 were rejected as being anticipated by Barrett et al. (US 5,973,647). Initially, it is being presumed that the Examiner meant to include dependent claim 22 in the rejection based on Barrett et al. Dependent claim 22 is pending in the application, but the Office Action of October 5th, 2006 makes no mention of a separate rejection for, or an "objection" to, dependent claim 22. Accordingly, the undersigned has treated the rejection in view of Barrett et al. as including dependent claim 22.

In response thereto, the undersigned is submitting a declaration under 37 C.F.R. §1.131 to swear behind Barrett et al. All but one of the co-inventors (Mr. George Fitzsimmons) has signed the above-mentioned declaration. Mr. Fitzsimmons is retired from The Boeing Company. Two U.S. Express Mail mailings of the Declaration to Mr. Fitzsimmons' last known address did not produce any response from Mr. Fitzsimmons. Phone calls to his last known home phone number could not be connected (i.e., a recording is presented explaining that the number has been disconnected). Accordingly, a declaration of the undersigned is also being submitted herewith to explain the inability to obtain Mr. Fitzsimmons' signature on the §1.131 Declaration.

In view of the foregoing, it is believed that the rejection of claims 1-23 in view of Barrett et al. has been overcome, and allowance of the application is most respectfully requested.

CONCLUSION

If the Examiner has any questions regarding this matter, it is requested that the undersigned be contacted at (248) 641-1600 at the Examiner's earliest convenience to discuss same.

Respectfully submitted,

Dated: Feb. 5, 2007

By: 
Mark D. Elchuk, Reg. No. 33,686

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDE/chs

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/639,912

Filing Date: August 16, 2000

Applicant: Bengault et al

Group Art Unit: 2614

Examiner: Shang, Annan

Title: Method And Apparatus For Bi-Directional Data
Services And Live Television Programming To
Mobile Platforms

Attorney Docket: 7784-000129

Declaration under 37 C.F.R. § 1.131

I hereby declare under penalty of perjury as follows:

That I am a co-inventor of the subject matter of U.S. patent application Serial No. 09/639,912, filed August 16, 2000 (the "'912 application").

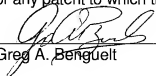
That the subject matter of the '912 application was conceived prior to Sept. 17, 1997, the filing date of U.S. Patent No. 5,973,647 to Barrett et al. (hereafter the "Barrett et al patent"), as evidenced by the document entitled "Wireless Aircraft Communicator", attached as Exhibit A. This document was created prior to September 17, 1997; its date of creation has been blacked out on page 1 for confidentiality purposes.

That diligence was exercised from just prior to Sept. 17, 1997, as illustrated by the document entitled "Phased Array Communication Antenna System (PACAS) Description Document" (attached as Exhibit B). The document of Exhibit B evidences that work was on-going in the development of the antenna system which is a component of the system set forth in the '912 application, from September 1997 through July of 1998.

That the subject matter of the '912 application has never been abandoned, suppressed or concealed.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true;

and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 the United States Code, and that such willful false statement may jeopardize the validity of the application, and patent issuing thereon, or any patent to which this verified statement is directed.

 12/7/06

Greg A. Benguelt Date

Jeffrey P. Harrang Date

William R. Richards Date

Michael G. Lynch Date

Michael de La Chapelle Date

Paulus J. Martens Date

Ronald S. Carson Date

Daniel F. Miller Date

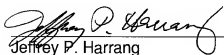
Geoffrey White Date

George Fitzsimmons Date

and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 the United States Code, and that such willful false statement may jeopardize the validity of the application, and patent issuing thereon, or any patent to which this verified statement is directed.

Greg A. Benguelt

Date

 12/10/06

Jeffrey P. Harrang

Date

William R. Richards

Date

Michael G. Lynch

Date

Michael de La Chapelle

Date

Paulus J. Martens

Date

Ronald S. Carson

Date

Daniel F. Miller

Date

Geoffrey White

Date

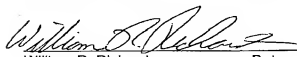
George Fitzsimmons

Date

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Greg A. Benguelt Date

Jeffrey P. Harrang Date



William R. Richards Date 12/5/06

Michael G. Lynch Date

Michael de La Chapelle Date

Paulus J. Martens Date

Ronald S. Carson Date

Daniel F. Miller Date

Geoffrey White Date

George Fitzsimmons Date

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Greg A. Benguelt

Date

Jeffrey P. Harrang

Date

William R. Richards

Date

 12-04-2006

Michael G. Lynch

Date

Michael de La Chapelle

Date

Paulus J. Martens

Date

Ronald S. Carson

Date

Daniel F. Miller

Date

Geoffrey White

Date

George Fitzsimmons

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Greg A. Benguelt Date

Jeffrey P. Harrang Date

William R. Richards Date

Michael G. Lynch Date

Michael de La Chapelle 1/5/07

Michael de La Chapelle Date

Paulus J. Martens Date

Ronald S. Carson Date

Daniel F. Miller Date

Geoffrey White Date

George Fitzsimmons Date

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Greg A. Benguelt Date

Jeffrey P. Harrang Date

William R. Richards Date

Michael G. Lynch Date

Michael de La Chapelle Date

 12/20/06

Paulus J. Martens Date

Ronald S. Carson Date

Daniel F. Miller Date

Geoffrey White Date

George Fitzsimmons Date

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Greg A. Benguelt Date

Jeffrey P. Harrang Date

William R. Richards Date

Michael G. Lynch Date

Michael de La Chapelle Date

Paulus J. Martens Date

Ronald S. Carson 12/4/2006

Ronald S. Carson Date

Daniel F. Miller Date

Geoffrey White Date

George Fitzsimmons Date

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Greg A. Benguelt Date

Jeffrey P. Harrang Date

William R. Richards Date

Michael G. Lynch Date

Michael de La Chapelle Date

Paulus J. Martens Date

Ronald S. Carson Date

 12/6/06

Daniel F. Miller Date

Geoffrey White Date

George Fitzsimmons Date

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Greg A. Benguelt Date

Jeffrey P. Harrang Date

William R. Richards Date


Michael G. Lynch Date

Michael de La Chapelle Date

Paulus J. Martens Date

Ronald S. Carson Date

Daniel F. Miller Date



Geoffrey White 12-22-06 Date

George Fitzsimmons Date

Russell Berkheimer

Russell Berkheimer

Date

4 DEC 06

Robert P. Higgins

Robert P. Higgins

Date

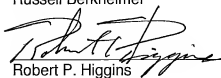
Arthur F. Morrison

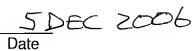
Arthur F. Morrison

Date

Russell Berkheimer

Date


Robert P. Higgins

 5 DEC 2006

Date

Arthur F. Morrison

Date

Russell Berkheimer

Date

Robert P. Higgins

Date

Arthur F. Morrison 12/06/2006
Arthur F. Morrison Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/639,912
Filing Date: August 16, 2000
Applicant: Greg Alan Bengueult et al.
Group Art Unit: 2614
Examiner: Annan Q. Shang
Title: METHOD AND APPARATUS FOR BI-DIRECTIONAL
DATA SERVICES AND LIVE TELEVISION
PROGRAMMING TO MOBILE PLATFORMS
Attorney Docket: 7784-000129/US

DECLARATION OF MARK D. ELCHUK

I, Mark D. Elchuk, hereby declare under penalty of perjury as follows:

1. That I am the attorney responsible for prosecution U.S. application Serial No. 09/639,912 (hereinafter the "912 application").
2. That Mr. George Fitzsimmons (hereinafter "Mr. Fitzsimmons") is named as a co-inventor of the subject matter of the '912 application.
3. That to the knowledge of the undersigned Mr. Fitzsimmons is a retired engineer, formerly employed by The Boeing Company.
4. That on or about December 5, 2006 a package including a declaration under 37 C.F.R. §1.131 to swear behind U.S. Patent No. 5,973,647 to Barrett et al. was mailed via U.S. Express Mail to Mr. Fitzsimmons at his last known address. No response was received by the undersigned in response to this mailing.
5. That on or about January 3, 2007 a second package, identical to the one mailed on or about December 5, 2006, was mailed to the last known address of Mr. Fitzsimmons. Again, no response has been received by the undersigned.

6. That a phone call made in January of 2007 to Mr. Fitzsimmons last known home telephone number could not be completed (i.e., a recording was received that the number is no longer in service).

7. That all reasonable efforts to obtain Mr. Fitzsimmons' signature on the Declaration under 37 C.F.R. §1.131 being submitted with the accompanying response have been made, but without success.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 the United States Code, and that such willful false statement may jeopardize the validity of the application, and patent issuing thereon, or any patent to which this verified statement is directed.

 Feb. 5, 2007
Mark D. Elchuk Date



Mark D. Elchuk
Direct Dial: 248-641-1229
mdeichuk@hdp.com

January 3, 2007

Mr. George Fitzsimmons
21604 148th Avenue, SE
Kent, WA 98042-3125

Re: U.S. Patent Application for:
METHOD AND APPARATUS FOR PROVIDING BI-DIRECTIONAL
DATA SERVICES AND LIVE TELEVISION PROGRAMMING TO
MOBILE PLATFORMS
Serial No. 09/639,912 Filed 08/16/00
HDP File No. 7784-000129

Dear Mr. Fitzsimmons:

This is a follow-up letter regarding the Declaration Under 37 C.F.R. § 1.131 that was forwarded to your attention on December 5, 2006 along with a copy of Exhibits A and B requesting your signature. Once again we enclose the Declaration and Exhibits for your convenience. If this document is accurate and completely truthful, then please sign and date it where indicated, and return it to me by overnight courier using the enclosed, self-addressed, stamped envelope.

This declaration is needed to overcome certain references that have been cited against the pending Boeing patent application for case 00-070, which you are named as a co-inventor on. Please do not hesitate to contact me should you have questions about this matter. My direct telephone line is (248) 641-1229. Thank you for your anticipated assistance and cooperation, and my best wishes for health and prosperity for 2007.

Very truly yours,

Mark D. Elchuk

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Enclosures

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|----------------------|------------------|-----------|-------|
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| | DV: 0.00 | TOTAL: | 15.83 |

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Harness, Dickey & Pierce, P.L.C. Attorneys and Counselors

Metropolitan: Detroit, MI St. Louis, MO Washington, DC

5445 Corporate Drive, Suite 200, Troy, MI 48068

Phone 248.641.1600

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Mark D. Elchuk
Direct Dial: 248-641-1229
mdeichuk@hdp.com

December 5, 2006

Mr. George Fitzsimmons
21604 148th Avenue, SE
Kent, WA 98042-3125

Re: U.S. Patent Application for:
METHOD AND APPARATUS FOR PROVIDING BI-DIRECTIONAL
DATA SERVICES AND LIVE TELEVISION PROGRAMMING TO
MOBILE PLATFORMS
Serial No. 09/639,912 Filed 08/16/00
HDP File No. 7784-000129

Dear Mr. Fitzsimmons:

Attached please find a Declaration Under 37 C.F.R. § 1.131, along with a copy of Exhibits A and B. If this document is accurate and completely truthful, then please sign and date it where indicated, and return it to me by overnight courier addressed as follows:

Mark D. Elchuk, Esquire
Harness, Dickey & Pierce, P.L.C.
5445 Corporate Drive, Suite 200
Troy, MI 48098

This Declaration is needed to overcome certain references that have been cited against the pending Boeing patent application for case 00-070, which you are named as a co-inventor on. Please do not hesitate to contact me should you have questions about this matter. Thank you for your anticipated assistance and cooperation.

Very truly yours,


Mark D. Elchuk

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service provider.*